

**Zoning Board of Appeals
MINUTES
Wednesday, May 22, 2024
7:00 PM**

To all persons interested in or affected by the actions of the Zoning Board of Appeals, you are hereby notified, pursuant to Section 11 of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto, that a public hearing on the following appeals will be held on Wednesday, May 22, 2024, at the time indicated:

The Zoning Board of Appeals Public Hearing will be held by remote participation methods. Public access to this meeting shall be provided in the following manner:

1. The meeting will be televised live via Xfinity Channel 8 or high definition Channel 1072. It may also be accessed via the Government Access Channel live stream on the Town of Barnstable’s website:
<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>
2. Real-time access to the Zoning Board of Appeals meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Zoning Board of Appeals by utilizing the Zoom link or telephone number and Meeting ID provided below:

Join Zoom Meeting Option	Telephone Number Option
https://townofbarnstable-us.zoom.us/j/86374225553	US Toll-free 888 475 4499
Meeting ID: 863 7422 5553	Meeting ID: 863 7422 5553

Applicants, their representatives and individuals required or entitled to appear before the Zoning Board of Appeals may appear remotely, and may participate through accessing the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to anna.brigham@town.barnstable.ma.us so that they may be displayed for remote public access viewing.

Copies of the applications are available for review by calling (508) 862-4682 or emailing anna.brigham@town.barnstable.ma.us.

Call to Order

Chair Dewey calls the meeting to order at 7:04 PM with an introduction of Board Members:

Member	Present	Absent
Dewey, Jacob – Chair	X	
Bodensiek, Herbert – Vice Chair	X	
Pinard, Paul – Clerk	X	
Alves, Manny	X	
Hansen, Mark	X	
Hurwitz, Larry	X	
Johnson, Denise		X
Webb, Aaron	X	

Also present is Anna Brigham, Principal Planner and Genna Ziino, Administrative Assistant.

Notice of Recording

This meeting of the Zoning Board of Appeals is being recorded and broadcast on the Town of Barnstable’s Government Access Channel. In accordance with MGL Chapter 30A §20, I must inquire whether anyone is recording this meeting and if so, to please make their presence known.

Minutes

March 27, 2024 & April 10, 2024 – Genna Ziino notes that Paul Pinard emailed her two changes: there was a document used at the March 27th meeting that was missing from the listed documents, and there was a typo on page 3 of the April 10, 2024 minutes. Aaron Webb moves to approve as amended. Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Manny Alves, Mark Hansen, Larry Hurwitz, Aaron Webb

Nay: None

Abstain: Paul Pinard (not present at April 10, 2024 meeting)

Old Business

7:00 PM

Appeal No. 2023-042

Baker & Moir, as Appellants

Patricia Baker and David D. Moir, as Appellants, are appealing the issuance of Building Permit BLDR-23-780 issued on November 1, 2023 to EJ Jaxtmer for the construction of a 3,100 sq. ft., 3-bedroom home for Janet Holian, Trustee of Holian Family Realty Tr. The subject property is located at 240 Windswept Way, Osterville, MA and 250 Windswept Way, Osterville, MA as shown on Assessor's Map 051 as Parcel 012-001 and 012-000, respectively. It is located in the Residence F-1 (RF-1) and the Resource Protection Overlay District (RPOD). Continued from January 24, 2024, February 28, 2024, March 27, 2024.

Attorney Mike Ford is representing Janet Holian, the property owner. He explains that his client has submitted a new ANR request that will be heard by the Planning Board on June 10. He requests to continue this to July 24, 2024. Attorney Ben Tymann is representing the applicants and is in support of the request for continuance. Aaron Webb moves to approve the continuance request to July 24, 2024. Herb Bodensiek seconds. It's noted that Paul Pinard has dropped off the meeting.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Aaron Webb, Larry Hurwitz, Manny Alves

Nay: None

Appeal No. 2023-042 Baker & Moir is continued to July 24, 2024.

7:01 PM

Appeal No. 2024-009

Bunn & Creedon

Brian M. Bunn and Jennifer A. Creedon have petitioned for a Variance pursuant to Section 240-14 E. Bulk Regulations in the RC-1 and RF Residential Districts, and Section 240-126 Variance Provisions. The Petitioners seek a variance to the front and side yard setback requirement to build an accessory structure (pool house) in the northwest corner of their lot adjacent to their existing inground pool and existing walkway and hardscape patio areas and retaining walls. The Petitioners propose to reduce the front yard setback to 12.8 feet where 30 feet is required, and the side yard setback to 7.7 feet where 15 feet is required. The subject property is located at 157 Poponessett Road, Cotuit, MA as shown on Assessor's Map 019 as Parcel 079. It is located in the Residence F (RF) Zoning District. Continued from April 10, 2024.

Members assigned are Herb Bodensiek, Aaron Webb, Manny Alves, Mark Hansen, and Larry Hurwitz. Attorney Dan Creedon is representing the applicants and explains that his clients have worked on a significant reconfiguration of the proposal and location but the new plans have not come back from the architect yet. Aaron Webb moves to continue this to June 26, 2024. Manny Alves seconds. Paul Pinard has rejoined the meeting.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Aaron Webb, Larry Hurwitz, Manny Alves

Nay: None

Appeal No. 2024-009 Bunn & Creedon is continued to June 26, 2024.

7:02 PM

Appeal No. 2024-011

773 South Main Street LLC

773 South Main Street LLC has applied to modify Condition No. 4 of Appeal No. 2019-005 to allow an additional accessory structure on the property, and also applied for a Special Permit in accordance with 240-125 Zoning Board of Appeals. The Applicant proposes to construct an approximately 12 foot by 20.5 foot in-ground pool approximately 3 feet from the westerly property line where 15 feet is required. The subject property is located at 773 South Main Street, Centerville, MA as shown on Assessor's Map 185 as Parcel 013. It is located in the Craigville Beach District (CBD) and the Centerville River North Bank (CRNB) Neighborhood Overlay Zoning District. Continued from April 10, 2024.

This item is taken out of order and is heard first. The members assigned were Herb Bodensiek, Manny Alves, Larry Hurwitz, Mark Hansen, and Aaron Webb.

Attorney Eliza Cox is representing the applicant and provides an update. When they were last before the Board, a direct abutter through council expressed concerns. Since then, the applicant has worked with that abutter to make changes to the proposed pool and has submitted revised plans. The size of the pool has been decreased to 10 ft. by 19 ft. They have also shifted the pool away from the property line to where it is now 8 feet from the property line at its closest point. They also reconfigured the pool equipment area to be enclosed with a 6-ft. stockade fence and additional plantings. They will add landscaped areas to improve the streetscape. The total hardscape is proposed to be reduced by 65 sq. ft. A letter was submitted by the abutter indicating their acceptance of the new plan. Attorney Cox asks the Board to consider removing the full buildout condition, and to add a condition that the Applicant shall not commence construction of the pool before October 1, 2024. She adds that condition no. 1 will need to be updated to the new pool dimensions and condition no. 2 will need to change the plan revision date to May 14, 2024.

Back to the Board for questions. Mark Hansen asks for the approximate timeline. Attorney Cox says their intention would be to start after the agreed upon date and are thinking the construction will take a couple of months. Manny Alves notes that the distance from the property line will need to be changed in the conditions. Attorney Cox confirms that it should be 8.03 ft.

Chair Dewey opens public comment. He says they received a letter from Patricia Carlson withdrawing her objection. The Chairman moves to close public comment. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz, Manny Alves

Nay: None

Mark Hansen would like to see a completion date included in the conditions. Attorney Cox has no problem with that.

Manny Alves makes a motion to approve based on the following findings:

1. The application falls within a category specifically excepted in the ordinance for a grant of a special permit: Section 240-125 allows for a modification of a Special Permit.
2. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected. This is evidenced by the abutter who initially opposed submitting a letter stating they appreciate the meaningful changes.
3. The single-family nature of the property and of the accessory nature of the detached structure are preserved.

Mark Hansen seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz, Manny Alves

Nay: None

Manny Alves says the appeal is subject to conditions 1-5 from the Staff Report dated March 28, 2024 with the following amendments:

1. Special Permit No. 2024-011 is granted to 773 South Main Street LLC to modify Condition No. 4 of Appeal No. 2019-005 to allow an additional accessory structure on the property, and also applied for a Special Permit in accordance with 240-125 Zoning Board of Appeals to construct an approximately 10 foot by 19 foot in-ground pool approximately 8.02 feet from the westerly property line where 15 feet is required at 773 South Main Street, Centerville, MA.
2. The site development shall be constructed in substantial conformance with the plan entitled "Proposed Pool Plan" by Baxter Nye Engineering & Surveying, dated February 10, 2023 with the last revision date of May 14, 2024.
3. The proposed development shall represent full build-out of the lot. Further expansion of the dwelling or construction of additional accessory structures is prohibited without prior approval from the Board.
4. All mechanical equipment associated with the dwelling (air conditioners, electric generators, etc.) shall be screened from neighboring homes and the public right-of-way.
5. The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to the issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.
6. Construction will not begin before October 1, 2024 but must be completed by May 26, 2025 unless otherwise approved by this Board.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Paul Pinard, Mark Hansen, Aaron Webb, Larry Hurwitz, Manny Alves

Nay: None

Special Permit No. 2024-011 773 South Main Street LLC is granted with conditions.

Mark Hansen leaves the meeting at this point.

New Business

7:03 PM

Appeal No. 2024-016

James

Jay and Betsy James have applied for a Special Permit pursuant to Section 240-91 H. (3) Nonconforming lot. The Applicant proposes to demolish the existing single family dwelling, raise the foundation elevation, and construct a new single family dwelling. The new dwelling will be detached from the garage, leaving the existing nonconforming garage in place. No construction will occur within the setbacks. The subject property is located at 642 South Main Street, Centerville, MA as shown on Assessor's Map 186 as Parcel 041. It is located in the Residence D-1 (RD-1) Zoning District.

The Board received an email request dated May 17, 2024 from Sand Dollar Customs to continue to the next available meeting. This is the first request to continue for this matter. Aaron Webb moves to continue this to July 10, 2024. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Aaron Webb, Larry Hurwitz, Manny Alves

Nay: None

Appeal No. 2024-016 James is continued to July 10, 2024.

Correspondence

Planning Board Notification & Transmittal – Subdivision No. 829 Public Hearing

Matters Not Reasonably Anticipated by the Chair

Larry Hurwitz asks for a definition of a pool house. They discuss that if they want to create a new definition in the ordinance, it needs a sponsor to go before Town Council. The Chairman thinks the Board should keep an ongoing list of topics like this that keep coming up to bring to Town Council for potential updating.

Upcoming Hearings

June 12, 2024, June 26, 2024, July 10, 2024

Adjournment

Chair Dewey moves to adjourn. Herb Bodensiek seconds.

Vote:

Aye: Jake Dewey, Herb Bodensiek, Aaron Webb, Larry Hurwitz, Manny Alves

Nay: None

Documents Used at this Meeting

- March 27, 2024 & April 10, 2024 minutes
- Appeal No. 2024-011 773 South Main Street LLC application packet
- Public comment from Patricia Carlson withdrawing objection
- Staff Report dated March 28, 2024 for Appeal No. 2024-011
- Continuance request from Sand Dollar Customs dated May 17, 2024 for Appeal No. 2024-016 James
- Planning Board Notification & Transmittal – Subdivision No. 829 Public Hearing

Respectfully submitted,
Genna Ziino, Administrative Assistant

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>